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July 14, 1998

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Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

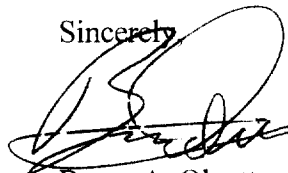
Re: Ex Parte Presentation: IB Docket No. 98-21

Dear Secretary Salas:

On Tuesday, July 14, 1998, Herbert Marks and Bruce Olcott, of Squire Sanders & Dempsey, L.L.P., on behalf of the State of Hawaii, Department of Commerce & Consumer Affairs, Cable Television Division, met with Regina Keeney, International Bureau Chief, Mindy Ginsburg, Associate Bureau Chief, Peter Pappas, Assistant Bureau Chief, Christopher Murphy, Satellite Policy Branch and Steve Varholy, FCC International Bureau intern, to discuss the lack of DBS service to Hawaii. During the meeting the attached documents were distributed. In accordance with Section 1.1206 of the Commission's Rules, two copies of Hawaii's written presentation are being filed herein as an attachment to this letter.

Please contact the undersigned if you have any questions.

Sincerely,



Bruce A. Olcott

Attachments

Copy: R. Keeney, International Bureau Chief
M. Ginsburg, Associate Bureau Chief
P. Pappas, Assistant Bureau Chief
C. Murphy, Satellite Policy Branch
S. Varholy, FCC International Bureau

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Ex Parte Presentation
IB Docket No. 98-21

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

International Bureau Chief
Federal Communications Commission
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State of Hawaii

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THE LACK OF DBS SERVICE IN THE STATE OF HAWAII

Background

- Section 100.53 of the Commission's rules (proposed to be renumbered new Section 25.146(d)) was adopted in 1995 in order to expedite the provision of DBS service to Hawaii and Alaska.
- However, more than two years after adoption, the residents of the State of Hawaii still do not have access to DBS services, in stark contrast to the continental United States ("CONUS"), where a number of companies currently provide some type of DBS or Direct-to-the-Home Fixed Satellite Service ("DTH-FSS").
- The residents of Hawaii have waited long enough to receive multiple, competing alternatives to the incumbent cable operator. Today it is more critical than ever for the Commission to reexamine the plights of Hawaii and Alaska.
 - DBS providers are shifting to eastern orbital slots and abandoning western slots.
 - Future DBS services may use non-U.S. satellites, many of which are located in eastern positions outside of the view of Hawaii and Alaska (e.g., Mexico's slot at 78° and Canada's slot at 82°).
 - Additional DTH services may become prevalent using Ka-band FSS satellites, which currently are under no obligation to serve Hawaii and Alaska.

The Commission's Notice of Proposed Rulemaking on DBS Issues Correctly Proposes to Strengthen the Geographic Service Requirements of Section 100.53

- On February 26, 1998, the Commission released its Notice of Proposed Rulemaking ("Notice") on DBS issues.
- In paragraphs 32-36 of the Notice, the Commission proposes to clarify and strengthen the geographic service requirements of Section 100.53.
- The State of Hawaii (the "State") filed comments and reply comments on the Notice, strongly supporting the thrust of the Commission's proposals to expedite service to Hawaii. The DBS providers filing comments predictably opposed any changes in the geographic service requirements. Yet, none of the DBS providers disputed the fact that Hawaii continues to lack any DBS service. Further, none of the DBS providers offered any useful solutions for correcting the problem of nonexistent DBS service.

The Commission Should Adopt the State of Hawaii's Recommendations For Strengthening the Geographic Service Requirements of Section 100.53

In its initial and reply comments, the State offered five specific recommendations for strengthening Section 100.53. The State's recommendations are as follows, accompanied by the State's response to the objections filed by the DBS providers:

Hawaii Recommendation #1

Expand the scope of the geographic service obligations beyond DBS operators to include other forms of MVPD satellite providers, including those that operate either geostationary-satellite orbit ("GSO") satellites in the Ka-band or foreign satellites in the DBS band.

PanAmSat argues that expanding geographic service obligations to Ka-band satellites was outside the scope of this proceeding. This position is erroneous. In the very first paragraph of the Notice, the Commission discusses the importance of Ka-band satellites:

We have recently licensed entities to provide services in the high-power Ka-band. This next generation of broadband satellite service offers great promise for new and innovative direct-to-home satellite services. In light of the growth of DBS and DTH-FSS [and] the promise of new broadband systems, . . . we believe it is particularly important to continue to examine our policies to ensure that they are procompetitive and deregulatory.

Furthermore, in the second paragraph of the Notice, the Commission expressly proposes to eliminate the DBS-specific rules of Part 100 and create a single regulatory framework for both DBS and other DTH-FSS services in Part 25. Thus, subjecting Ka-band satellites and foreign satellites to the geographic service requirements of Section 100.53 (or new Section 25.146(d)) is totally consistent with the thrust of the Commission's proposal to create a single regulatory framework for all DTH services.

Hawaii Recommendation #2

Clarify that Section 100.53(b) applies to DBS licensees who were granted their authorizations prior to January 19, 1996 and who: (a) request extensions of time; (b) request launch authority; or (c) replace any satellite

Some DBS providers argue that the useful life of satellites extends beyond the initial 10-year license term and that these satellites are technically incapable of serving Hawaii. The State is sympathetic to this argument and, therefore, agrees that a pre-existing satellite should not be forced out of the sky at the end of its license term if a DBS provider intends to continue using it.

Absent this special exception, however, the Commission should clarify that Section 100.53(b) obligations are activated by all different types of "post-January 1996" DBS authorizations. The term "authorizations" in Section 100.53(b) is in the plural and thus covers a variety of Commission actions including construction permits, initial and renewal licenses, and launch authority.

All DBS providers have been on notice since December 1995 that their satellites should be technically capable of serving Hawaii (at least from the 110° W.L. and 119° W.L. orbital slots, as well as from the four western orbital slots). Thus, all satellites of DBS providers that have been the subject of a Commission authorization since January 1996 should be required to serve Hawaii upon the commencement of operations.

Hawaii Recommendation #3

Do not delete Section 100.53(a), but instead clarify that Section 100.53(a) requires DBS licensees to provide full DBS service to Hawaii and Alaska from their western orbital slots by the end of their western orbital slot milestones or else forfeit their western orbital slots.

The purpose behind Section 100.53(a) is to expedite DBS service to Hawaii. The State, therefore, agrees with the Commission that Section 100.53(a) should not be mistakenly interpreted as allowing DBS operators to warehouse western orbital channels for up to 16 years. Section 100.53(a) should not be deleted, however. Rather, it should be clarified so that it unambiguously requires DBS providers to provide service to Hawaii and Alaska from their western orbital slots by the end of their six-year western orbital slot milestones, or else forfeit their western channels. Section 100.53(a) was intended to supplement Section 100.19 by requiring that western channels not simply be put into operation within six years, but also serve Hawaii and Alaska within six years.

The DBS providers' claim that enforcing the six-year milestone deadline would delay service to Alaska and Hawaii should not be taken seriously. If a DBS provider cannot provide service within six years, it clearly has no interest in using the western orbital slot and is merely warehousing spectrum. Western orbital slots that are not used within the six-year milestone period should be reissued to other entities that are committed to providing service to Hawaii expeditiously.

Hawaii Recommendation #4

Adopt an "offshore states" policy requiring DBS licensees to provide full DBS service to Hawaii and Alaska before they are eligible to provide service from any eastern orbital channel beyond their existing assignments.

The State supports an "offshore states" policy. If DBS providers are permitted to add additional DBS satellites to eastern orbital slots that, arguably, are technically incapable of serving Hawaii (e.g., 61.5° W.L.), the CONUS market could become saturated, thus leaving DBS providers with much less incentive to launch satellites from orbital slots capable of serving Hawaii.

The DBS providers dismiss the importance of a saturated CONUS market, arguing that saturation would merely mean that DBS providers would search out new revenue opportunities elsewhere. This argument defies reality. DBS providers have shown no interest in serving Hawaii and Alaska from the western orbital slots. Rather, DBS providers have focused exclusively on utilizing their eastern orbital slots to serve the CONUS, where the vast majority of revenue is located.

Most recently, the lack of interest in the western orbital slots was demonstrated by the decisions of Tempo, DirecTV and USSB to abandon western slots (166°, 157° and 148°, respectively) rather than launch satellites to them. The indifference shown by the DBS providers towards the western orbital slots proves that the Commission should adopt an offshore-states policy for the eastern orbital slots. Otherwise, Hawaii may never be served by multiple, competing DBS providers, or at most will receive sub-standard service from satellites transmitting only "niche" programming.

Hawaii Recommendation #5

Clarify that the "full" DBS service required by Section 100.53's geographic service obligation means that Hawaii and Alaska subscribers are entitled to receive DBS programming that is of equal value with that offered to subscribers in the continental United States ("CONUS"), and at equivalent prices.

Section 100.53 requires that DBS service to Alaska and Hawaii be of equal value to that provided to the CONUS. In its 1995 order adopting Section 100.53, the Commission stated that the obligation to serve Alaska and Hawaii involves "full service." Although DBS providers have argued that the term "full" refers only to power levels, such a limited interpretation of the term "full" would eviscerate the geographic service requirement and defeat the intent behind Section 100.53.

A programming package that consists of marginal, niche programming (or, even worse, test patterns) does not satisfy the geographic service requirement of Section 100.53. Hawaii and Alaska are entitled to the same "core-CONUS" programming that subscribers on the CONUS receive. The programming package offered Hawaii and Alaska need not be identical to that offered to every other CONUS location, but it must be of equal value.

On the issue of non-discriminatory pricing of DBS hardware and service, the State recognizes that the Commission recently decided not to impose pricing conditions on EchoStar with respect to service in Hawaii "at this time." See DA 98-794 at ¶ 9. The Commission made this decision based on its hope and expectation that EchoStar would not discriminate against Hawaii. The State urges the Commission to scrutinize such pricing policies in Hawaii closely. Furthermore, the Commission should reserve its rights to regulate the pricing of DBS providers in the future if the facts demonstrate that discriminatory pricing is occurring.

NUMBER OF DBS CHANNELS BY OWNERSHIP AND ORBITAL LOCATION

Western Positions

Eastern Positions

	Total Channels	Western Positions				Eastern Positions			
		175° W.	166° W.	157° W.	148° W.	Full-CONUS			
						119° W.	110° W.	101° W.	61.5° W.
DirecTV	54			27				27	
USSB	16				8		3	5	
EchoStar	35*	*	*		24	11			
DirecTSat	22	11				10	1		
DBSC	22	11							11
MCI	28						28		
Tempo	22		11			11			
Continental	22		11						11
Dominion	8*		**						8
Unassigned	27	10	10	5					2

* request pending for 11 channels

** request pending for 8 channels

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policies and Rules for the) IB Docket No. 98-21
Direct Broadcast Satellite Service)
)

COMMENTS OF THE STATE OF HAWAII

The State of Hawaii (the "State")¹ hereby submits comments in response to the Notice of Proposed Rulemaking (the "Notice") which the Commission issued in the above-captioned docket.² The State wholeheartedly welcomes the Commission's Notice and appreciates the Commission's interest in making direct broadcast satellite ("DBS") service available to Hawaii and Alaska residents as soon as possible. In particular, the State strongly supports the thrust of paragraphs 32-36 of the Notice, in which the Commission clarifies the geographic service requirements of current Section 100.53 of its rules (proposed to be renumbered Section 25.146(d)).

I. INTRODUCTION

Section 100.53 of the Commission's rules was adopted in 1995 in order to expedite the provision of DBS service to Alaska and Hawaii.³ However, more than two years after adoption, the residents of the State of Hawaii still do not have access to DBS services, in stark contrast to the

¹ These comments are submitted by the State of Hawaii through its Department of Commerce and Consumer Affairs. A division of the Department -- the Cable Television Division -- is the State's cable franchise administrator.

² Policies and Rules for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, IB Docket No. 98-21, FCC 98-26 (released Feb. 26, 1998) ("Notice").

³ 47 C.F.R. § 100.53.

continental United States ("CONUS"), where at least five companies currently provide some type of DBS or Direct-to-the-Home ("DTH") service.⁴ The State looks forward to obtaining this important service which offers additional programming choices, as well as a promising means for the delivery of a wide variety of other specialized services (e.g., Internet access).⁵ In addition, DBS would provide badly-needed competition to Hawaii's terrestrial cable telecommunications systems, which is especially important for Hawaii because Hawaii's mountainous topography makes line-of-sight reception of over-the-air broadcast signals difficult (thus currently leaving cable as the sole source of video programming for many Hawaiian residents).⁶ Furthermore, Hawaii's non-contiguous island structure makes access to land-based distribution systems of video programming problematic for some residents.

The residents of Hawaii and Alaska have waited long enough to receive competitive alternatives to the incumbent cable operator. In order to ensure that Hawaii and Alaska receive

⁴ The State may receive some type of DBS service from EchoStar and Tempo by the end of 1998. However, whether these carriers will actually initiate service remains uncertain, as does the scope of programming, if any, that would eventually be provided. These uncertainties demonstrate that problems still exist with the current regulatory mechanism (e.g., Section 100.53) even assuming that Hawaii receives some type of DBS service this year.

⁵ See Annual Assessment of the Status of Competition in markets for the Delivery of Video Programming, Fourth Annual Report, CS Docket No. 97-141, FCC 97-423 (released Jan. 13, 1998) at ¶ 56 ("DBS services offer many features which consumers rate highly, such as digital picture quality, compact disk sound clarity, increased channel capacity, near video on demand ('NVOD') movies and other interactive programming and data services.").

⁶ See Notice at ¶ 33 ("We believe that provision of [DBS] service to Alaska and Hawaii will provide important MVPD competition in these markets.").

competing multichannel video programming distributors ("MVPDs") expeditiously, the Commission should modify Section 100.53⁷ as follows:

1. Expand the scope of the geographic service obligations beyond DBS operators to include other forms of MVPD satellite providers, including those that operate either geostationary-satellite orbit ("GSO") satellites in the Ka-band or foreign satellites in the DBS band;
2. Clarify that Section 100.53(b) applies to DBS licensees⁸ who were granted their authorizations prior to January 19, 1996 and who: (a) request extensions of time; (b) request license renewals; or (c) replace any satellite;
3. Do not delete Section 100.53(a), but instead clarify that Section 100.53(a) requires DBS licensees to provide full DBS service to Hawaii and Alaska from their western orbital slots by the end of their western orbital slot milestones or else forfeit their western orbital slots;
4. Adopt an "offshore states" policy that requires that DBS licensees provide full DBS service to Hawaii and Alaska before they are eligible to provide service from any eastern orbital channel beyond their existing assignments; and
5. Clarify that the "full" DBS service required by Section 100.53's geographic service obligation means that Hawaii and Alaska subscribers are entitled to receive DBS programming that is of equal value with that offered to subscribers in the continental United States ("CONUS"), and at equivalent prices.

II. THE SCOPE OF SECTION 100.53's GEOGRAPHIC SERVICE REQUIREMENTS SHOULD APPLY TO FOREIGN DBS PROVIDERS AND TO ALL PROVIDERS OF GSO SATELLITES IN THE Ka-BAND

The U.S. has begun to authorize the use of foreign orbital slots to provide DBS programming to U.S. residents. In April 1996, the U.S. reached an agreement with Mexico to permit DBS and DTH-FSS satellites licensed by either country to provide service into each other's

⁷ For purposes of these comments, all references to Section 100.53 are interchangeable with references to the proposed new Section 25.146(d).

⁸ Given the State's Recommendation #1, all following references to "DBS" are meant to include all MVPD satellite providers offering DTH services to the public.

territory.⁹ Other agreements with additional countries are expected soon. If these foreign satellites are not covered by Section 100.53, DBS service to Hawaii will be further undermined because the U.S. market can economically support only a limited number of DBS providers. If foreign satellites are permitted to provide DBS service to the CONUS without simultaneously serving Hawaii, the mainland U.S. market could become saturated and no room would be left for those providers that are willing and able to serve Hawaii. If DBS providers want to uplink DBS programming to foreign satellites for consumption in the U.S., they should abide by the Commission's Section 100.53 rules designed to promote truly nationwide availability of DBS service. Any other result would be inequitable to the citizens of Hawaii and would undermine the Commission's Section 1 mandate.¹⁰ Applying Section 100.53 to foreign DBS providers would treat foreign providers exactly the same as U.S. providers and would thus ensure consistent national treatment.

Section 100.53 should also apply to new DTH services in the Ka-band. In October 1997, the Commission adopted licensing and service rules for a new generation of fixed-satellite service ("FSS") systems in the Ka-band.¹¹ As the Commission stated:

⁹ See Notice at ¶ 11 n.36; "Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Transmission and Reception from Satellites for the Provision of Satellite Services to Users in the United States of America and the United Mexican States" (Apr. 28, 1996); Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services in the United States and the United Mexican States, Public Notice, DA 96-1880, Rpt. No. SPB-65 (Nov. 13, 1996).

¹⁰ 47 U.S.C. § 151.

¹¹ Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Third Report and Order, CC Docket No. 92-297, FCC 97-378 (released Oct. 15, 1997) ("Ka-band Order").

“The satellite systems that will operate in this band represent a new age in satellite communications. These systems have the potential to provide a wide variety of broadband interactive digital services in the United States and around the world including: voice, data, and video; videoconferencing; facsimile; computer access and telemedicine. The systems can provide direct-to-home services, potentially allowing customers to participate in activities from distance learning to interactive home shopping. . . . These systems also represent an opportunity for the United States to continue its leadership role in promoting global development through enhanced communication infrastructures and services. They also represent a major step in achieving a seamless information infrastructure.”¹²

In the Ka-band Order, the Commission declared that “it serves the public interest to adopt a coverage area requirement” for 28 GHz NGSO FSS systems.¹³ In particular, the Commission required these NGSO satellites to provide FSS on a continuous basis throughout the fifty states, Puerto Rico, and the U.S. Virgin Islands.

Unfortunately, the Commission did not adopt a similar coverage area requirement for GSO systems operating in the Ka-band. The Commission should use the current proceeding to correct this oversight and require that all GSO systems operating in the Ka-band be required to serve Hawaii and Alaska. Hawaii’s citizens should receive, indeed they expect to receive, multi-channel video programming and other broadband communications services via each of the major delivery systems available in the CONUS – including DBS, Ka-band, and other DTH services. Given its remote location, it is critical that Hawaii residents be included in the “seamless information infrastructure” that the Ka-band promises to deliver.¹⁴

¹² Id. at ¶¶ 1-2.

¹³ Id. at ¶ 34.

¹⁴ The feasibility of serving Hawaii from many orbital locations assigned to Ka-band satellites is unquestioned. In October 1997, Capitol Broadcasting Company, Inc. testified before Congress that it

III. SECTION 100.53(b) APPLIES TO ALL SATELLITES REPLACED BY DBS LICENSEES WHO WERE GRANTED THEIR AUTHORIZATIONS PRIOR TO JANUARY 19, 1996

In the Notice, the Commission clarifies that Section 100.53(b) does not apply only to DBS providers awarded licenses after January 19, 1996, but also applies to DBS providers awarded licenses prior to January 19, 1996. Specifically, the Commission clarifies that DBS providers awarded licenses prior to January 19, 1996 are subject to Section 100.53(b) if they seek: (1) extensions of time; or (2) license renewals.¹⁵ While the State wholeheartedly agrees with this clarification, the Commission should also clarify that Section 100.53(b) applies to all DBS providers that seek to replace one of their satellites. All newer satellites clearly can be technically capable of serving Hawaii and DBS providers should be required to utilize such satellites in any replacement activity.

IV. THE COMMISSION SHOULD CLARIFY THAT SECTION 100.53(a) REQUIRES DBS OPERATORS TO PROVIDE FULL DBS SERVICE TO HAWAII AND ALASKA BY THE END OF THEIR WESTERN ORBITAL SLOT MILESTONES

In the Notice, the Commission recommends deleting Section 100.53(a) in its entirety because it could mistakenly be interpreted as allowing DBS operators to warehouse western orbital channels for up to 16 years.¹⁶ The State agrees with the Commission that such an interpretation is unreasonable given the purpose behind Section 100.53, which is to expedite DBS

will operate a satellite in the Ka-band with 61 spotbeams that will cover the CONUS, Alaska and Hawaii. Capitol intends to offer a local station package of all over-the-air, full power, commercial television stations within a given station's designated market area. See Notice at ¶ 58; Statement of Capitol Broadcasting Company, Inc. before the Subcommittee on Courts and Intellectual Property of the Committee on the Judiciary, U.S., House of Representatives, Hearing on the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals License (Oct. 30, 1997).

¹⁵ Notice at ¶ 33.

¹⁶ Id. at ¶ 36.

service to Hawaii. However, because Section 100.53 has not yet produced its expected goal (i.e., DBS service to Hawaii and Alaska), an elimination of the Section 100.53(a) mandate is, at best, premature. A better approach would be to clarify that Section 100.53(a) requires DBS providers to provide service to Hawaii and Alaska from their western orbital slots by the end of their six-year western orbital slot milestones, or else forfeit their western channels.¹⁷

Section 100.53(a) should not be deleted in its entirety because, properly interpreted, it provides additional pressure on DBS operators to serve Hawaii and Alaska. The Commission states that deleting Section 100.53(a) would revert DBS operators back to Section 100.19, which requires that a DBS operator put its western channels "into service" by the expiration of its six-year western orbital milestone. Relying solely on Section 100.19 is insufficient because the term "in operation" does not necessitate service to Hawaii. Section 100.53(a) was intended to supplement Section 100.19 by requiring that western channels not simply be put into operation within six years, but also serve Hawaii and Alaska within six years. If Section 100.53(a) were deleted, a DBS operator could satisfy its six-year milestone obligation by putting a satellite into service in a western orbital slot, pointing the satellite directly at Japan, and transmitting 100 percent Japanese language programming. To prevent such misuse of its western channels, the Commission should maintain Section 100.53(a), but clarify the language to read as follows:

Those holding DBS channel assignments in a western orbital slot (i.e., 148° W.L., 157° W.L., 166° W.L., or 175° W.L.) as of January 19, 1996 must provide DBS service to Alaska and Hawaii from those channels before the end of their due diligence requirements, as set forth in Section 100.19, or else relinquish those channel assignments. Such DBS service to Alaska and

¹⁷ See 47 C.F.R. § 100.19 (requires that a DBS satellite be placed into operation within six years of the construction permit grant).

Hawaii must be of equal value and at equal prices to the service offered to subscribers in the Continental United States.

V. THE COMMISSION SHOULD ADOPT AN "OFFSHORE STATES" POLICY

In the Notice, the Commission seeks comment on the State's proposal for an "offshore states" policy. This policy will require licensees of DBS channels at eastern orbital slots to demonstrate that they have provided service to Hawaii and Alaska before they would be eligible to provide service from any eastern DBS channel assignment beyond their existing assignments.¹⁸ The State strongly supports the establishment of such a policy for similar reasons a policy regarding foreign satellites is needed. To wit, the U.S. market can economically support only a limited number of DBS satellites. If DBS providers are permitted to add additional DBS satellites from orbital slots technically incapable of serving Hawaii, the mainland U.S. market could become saturated and no incentive would be left to launch satellites from orbital slots capable of serving Hawaii.

To the extent that it is technically feasible to serve Hawaii and Alaska from eastern orbital slots, DBS providers should be required to do so because it will help assure that "core-CONUS" programming reaches these remote points. From Hawaii's perspective, satisfying the geographic service requirement from western orbital slots may be less desirable because DBS providers may resist transmitting duplicative "core-CONUS" programming from those slots. Thus, the Commission should ensure that every effort is made to satisfy the geographic service requirements from the eastern orbital slots.

¹⁸ Notice at ¶ 34. Footnote 80 of the Notice cites to a letter sent from the State's FCC counsel to Chris Murphy of the Satellite Policy Branch in advance of the Commission's April 25, 1997 roundtable on DBS (DA 97-616, Rpt. No. IN 97-8). For the sake of precision, the letter was dated April 21, 1997, not April 23, 1997, and was signed by Herbert Marks, not David Nall.

VI. THE COMMISSION SHOULD CLARIFY THAT "FULL" DBS SERVICE MEANS PROGRAMMING OF EQUAL VALUE

Section 100.53 requires that DBS service to Alaska and Hawaii be at least equivalent to that provided to the CONUS. In its order adopting Section 100.53, the Commission stated that the obligation to serve Alaska and Hawaii involves "full service."¹⁹ Although it has been argued that the term "full" refers only to power levels, such a limited interpretation of the term "full" would eviscerate the geographic service requirement and defeat the intent behind Section 100.53. Under a power-level definition of "full," a DBS provider could satisfy its Section 100.53 obligations merely by transmitting multiple channels of test patterns (albeit at full power) to Hawaii and Alaska! Such a result clearly was not the intent of the Commission in promulgating Section 100.53, and would undercut the underlying public interest finding.

A programming package that consists of marginal, niche programming does not satisfy the geographic service requirement of Section 100.53. Hawaii and Alaska are entitled to the same "core-CONUS" programming that subscribers on the mainland U.S. receive. The programming package offered Hawaii and Alaska need not be identical to that offered to every other CONUS location, but it must be of equal value. The Commission should, therefore, incorporate "equal value" programming into the geographic service requirements of Section 100.53. In addition, the "equal value" programming afforded to Hawaii and Alaska must be at prices equivalent to those charged in the CONUS.

¹⁹ Revision of Rules and Policies for the Direct Broadcast Satellite Service, 11 FCC Rcd 9712, 9761 (1995) (emphasis added). See also Revision of Rules and Policies for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, 11 FCC Rcd 1297, 1324 (1995) (Geographic service rules are needed because in their absence "Alaska and Hawaii will not be adequately served.") (emphasis added).

VII. CONCLUSION

The State strongly supports the intent behind paragraphs 32-36 of the Commission's Notice. Clarifications and modifications of Section 100.53 are badly needed to expedite DBS service to Hawaii, which still lacks any DBS service. The Commission should incorporate into its proposals the five recommendations made by the State, namely: (1) Expand the scope of Section 100.53's geographic service obligations beyond DBS operators to include other forms of MVPD satellite providers; (2) Clarify that Section 100.53(b) applies to the replacement of any DBS satellite; (3) Do not delete Section 100.53(a), but instead clarify that it requires DBS licensees to provide full DBS service to Hawaii and Alaska from their western orbital slots by the end of the milestone period; (4) Adopt an "offshore states" policy; and (5) Clarify that "full" DBS service means DBS programming of equal value and at equivalent prices.

Respectfully submitted,

STATE OF HAWAII

By:

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STATE OF HAWAII

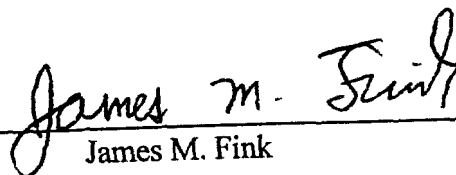
1010 Richards Street

Honolulu, Hawaii 96813

April 6, 1998

CERTIFICATE OF SERVICE

I, James M. Fink, do hereby certify that on this 6th day of April, 1998, I have caused a copy of the foregoing "Comments of the State of Hawaii" in IB Docket No. 98-21 to be served via hand delivery upon the persons listed below.


James M. Fink

Christopher J. Murphy
International Bureau
Federal Communications Commission
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International Transcription Services
1231 20th Street, N.W.
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